

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-221810

DATE: April 10, 1986

MATTER OF: M & P Painting - Davis-Bacon Act Debarment

DIGEST:

1. The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had falsified certified payroll records, and failed to pay its employees minimum wages and proper overtime compensation. Based on our independent review of the record in this matter, we conclude that the contractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the underpayment of employees was intentional. Therefore, the contractor will be debarred under the Act.
2. Where, as here, the funds on deposit with GAO which have been withheld by a contracting officer pursuant to § 1(a) of the Davis-Bacon Act, 40 U.S.C. § 276a(a) (1982), are insufficient to cover the amount due to the workers involved, the amount on deposit should be distributed among them on a pro-rata basis.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by letter dated November 19, 1985, recommended that M & P Painting and Melvin Peppas, individually and as owner, be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), and the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-332 (1982). For the reasons that follow, we concur with DOL's recommendation, order its implementation, and further order that the funds on deposit with our Office in this matter be distributed to the workers involved.

M & P Painting performed work under a contract (FO4684-82-C0070) with the Department of the Air Force.

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The contract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Furthermore, pursuant to 29 C.F.R. § 5.5(a) (1985), the contractor was to submit payroll records certified as to correctness and completeness.

The DOL found as a result of an investigation that employees were not paid the minimum wages required pursuant to the Davis-Bacon Act. Further, DOL found that certified payrolls were falsified, and that employees were not paid overtime compensation at the rate prescribed by the Contract Work Hours and Safety Standards Act. The DOL notified M & P Painting and Mr. Peppas of the violations with which they were charged by certified letter, together with an admonition that debarment was possible. Further, M & P Painting and Mr. Peppas were given an opportunity for a hearing before an administrative law judge in accordance with 29 C.F.R. § 5.12(b). The DOL reported to us that although this letter was received by M & P Painting and Mr. Peppas, no hearing was requested.

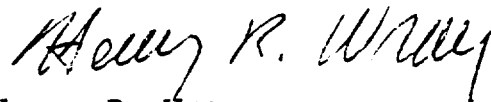
After reexamining the record, DOL found that M & P Painting and Mr. Peppas had violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that the names M & P Painting and Melvin Peppas, individually and as owner, be placed on the debarred bidders list for violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under the Act. The DOL computed the gross amount due to the employees to be \$63,911.67.

The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning classification, and "substantial violations" which are intentional as demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Davis-Bacon Act. Falsification of payroll records is a basis for debarment under the Davis-Bacon Act. See, e.g., Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

Based on our independent review of this matter, we conclude that M & P Painting and Mr. Peppas disregarded their obligations to employees under the Davis-Bacon Act. There was a substantial violation of the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by M & P Painting's and Mr. Peppas' bad faith in the falsification of certified payroll records. In addition, the record shows that M & P Painting and Mr. Peppas failed to pay employees proper overtime compensation.

Accordingly, we order that the names M & P Painting and Melvin Peppas, individually and as owner, be included on a list to be distributed to all departments of the Government, and, pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any firm, corporation, partnership, or association in which they, or any of them, have an interest until 3 years have elapsed from the date of publication of such list.

Further, we order that the funds on deposit with our Office be disbursed to the workers involved in accordance with established procedures. Since the \$47,769.92 on deposit with our Office is insufficient to cover the \$63,911.67 due to the workers, the amount available should be distributed among them on a pro-rata basis. S & W General Contractors, Inc., B-217857, August 28, 1985. The workers may recover the additional amounts due them by independently pursuing their claims against the contractor and its surety, as provided by section 3(b) of the Davis-Bacon Act, 40 U.S.C. § 276a-2(b). Grandstaff Roofing and Sheet Metal Co., B-217858, September 10, 1985.



Henry R. Wray
Associate General Counsel